

# The Burger Court Opinion Writing Database

## *Celotex Corp. v. Catrett*

477 U.S. 317 (1986)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 31, 1985

Re: No. 85-198 - Celotex Corp. v. Catrett, Admin. of  
the Estate of Louis Catrett

Dear Bill:

I join your dissent from denial of cert.

Regards,



Justice Rehnquist

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

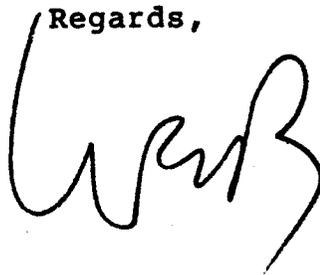
May 6, 1986

RE: 85-198 - Celotex Corp. v. Catrett

Dear John:

I may have spoken with you about a dissent in this case.  
Will you proceed?

Regards,

A handwritten signature in cursive script, appearing to read "W. E. B.", which is the signature of Warren E. Burger.

Justice Stevens  
Justice Brennan  
Justice White

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 17, 1986

85-198 - Celotex Corp. v. Catrett, Admin. of the Estate  
of Louis Catrett, Deceased

Dear Bill:

I conclude to stay with my conference vote and will  
join Bill Brennan's dissent.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', with a long horizontal line extending to the right below the letters.

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 28, 1986

Celotex Corp. v. Catrett  
No. 85-198

Dear Bill,

In reviewing my file of this case, I realized that I had not yet communicated to you. I am writing a dissent in this case and expect to circulate it by the end of this week or the beginning of next.

Sincerely,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Brennan  
 JUN 3 1986

Circulated: \_\_\_\_\_

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-198

CELOTEX CORPORATION, PETITIONER v. MYRTLE  
 NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE BRENNAN, dissenting.

This case requires the Court to determine whether Celotex satisfied its initial burden of production in moving for summary judgment on the ground that the plaintiff lacked evidence to establish an essential element of her case at trial. I think that I agree with the Court's legal analysis, although I am not certain that I properly discern the Court's exact holding. The Court clearly rejects the ruling of the Court of Appeals that the defendant must provide affirmative evidence disproving the plaintiff's case. Beyond this, however, it is unclear what is required of a moving party seeking summary judgment on the ground that the nonmoving party cannot prove its case.<sup>1</sup> This lack of clarity is unfortunate:

<sup>1</sup>It is also unclear what the Court of Appeals is supposed to do in this case on remand. JUSTICE WHITE—who has provided the Court's fifth vote—plainly believes that the Court of Appeals should reevaluate whether the defendant met its initial burden of production. However, the decision to reverse rather than to vacate the judgment below implies that the Court of Appeals should assume that Celotex has met its initial burden of production and ask only whether the plaintiff responded adequately, and, if so, whether the defendant has met its ultimate burden of persuasion that no genuine issue exists for trial. Absent some clearer expression from the Court to the contrary, JUSTICE WHITE's understanding would seem to be controlling. Cf. *Marks v. United States*, 430 U. S. 188, 193 (1977).

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES 1, 2

From: Justice Brennan

Circulated: \_\_\_\_\_

Recirculated: JUN 8 1986

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-198

CELOTEX CORPORATION, PETITIONER v. MYRTLE  
NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE BRENNAN, with whom JUSTICE BLACKMUN joins,  
dissenting.

This case requires the Court to determine whether Celotex satisfied its initial burden of production in moving for summary judgment on the ground that the plaintiff lacked evidence to establish an essential element of her case at trial.

I do not disagree with the Court's legal analysis. The Court clearly rejects the ruling of the Court of Appeals that the defendant must provide affirmative evidence disproving the plaintiff's case. Beyond this, however, the Court has not clearly explained what is required of a moving party seeking summary judgment on the ground that the nonmoving party cannot prove its case.<sup>1</sup> This lack of clarity is unfortunate:

<sup>1</sup> It is also unclear what the Court of Appeals is supposed to do in this case on remand. JUSTICE WHITE—who has provided the Court's fifth vote—plainly believes that the Court of Appeals should reevaluate whether the defendant met its initial burden of production. However, the decision to reverse rather than to vacate the judgment below implies that the Court of Appeals should assume that Celotex has met its initial burden of production and ask only whether the plaintiff responded adequately, and, if so, whether the defendant has met its ultimate burden of persuasion that no genuine issue exists for trial. Absent some clearer expression from the Court to the contrary, JUSTICE WHITE's understanding would seem to be controlling. Cf. *Marks v. United States*, 430 U. S. 188, 193 (1977).

Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Brennan**

Circulated: \_\_\_\_\_

Recirculated: **JUN 18 1986** \_\_\_\_\_

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-198

CELOTEX CORPORATION, PETITIONER v. MYRTLE  
 NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE BRENNAN, with whom THE CHIEF JUSTICE and  
 JUSTICE BLACKMUN join, dissenting.

This case requires the Court to determine whether Celotex satisfied its initial burden of production in moving for summary judgment on the ground that the plaintiff lacked evidence to establish an essential element of her case at trial. I do not disagree with the Court's legal analysis. The Court clearly rejects the ruling of the Court of Appeals that the defendant must provide affirmative evidence disproving the plaintiff's case. Beyond this, however, the Court has not clearly explained what is required of a moving party seeking summary judgment on the ground that the nonmoving party cannot prove its case.<sup>1</sup> This lack of clarity is unfortunate:

<sup>1</sup> It is also unclear what the Court of Appeals is supposed to do in this case on remand. JUSTICE WHITE—who has provided the Court's fifth vote—plainly believes that the Court of Appeals should reevaluate whether the defendant met its initial burden of production. However, the decision to reverse rather than to vacate the judgment below implies that the Court of Appeals should assume that Celotex has met its initial burden of production and ask only whether the plaintiff responded adequately, and, if so, whether the defendant has met its ultimate burden of persuasion that no genuine issue exists for trial. Absent some clearer expression from the Court to the contrary, JUSTICE WHITE's understanding would seem to be controlling. Cf. *Marks v. United States*, 430 U. S. 188, 193 (1977).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 8, 1986

85-198 - Celotex Corporation v. Catrett

Dear Bill,

I agree with you that the CA was wrong in holding that the moving defendant must always support his motion with evidence negating a genuine dispute about a material fact. I agree that he may rely on depositions, answers to interrogatories and the like to show that the plaintiff has no evidence to prove an essential element of his case. But the defendant must discharge the burden the rules place on him: he may not simply move for summary judgment without supporting the motion in any way or by the conclusory assertion that the plaintiff has no evidence to prove his case; by affidavit or reference to discovery materials, he must demonstrate that there is no factual issue for trial.

As I see it, a plaintiff need not initiate any discovery nor reveal his witnesses or evidence unless required to do so under the discovery rules or by pre-trial order. Of course, he must respond if so required; but he need not depose his witnesses or obtain their affidavits in order to defeat a summary judgment motion asserting that he has failed to produce any support for his case. Rather, it is the defendant's task, if he wants summary judgment, to negative the claimed support for the plaintiff's case.

I voted to affirm in this case because I thought plaintiff had revealed a witness to the decedent's exposure to asbestos in the Chicago area and that defendant had done nothing to discount the significance of this fact other than to claim that plaintiff had produced no admissible evidence. To be sure, this was not the ground relied on by the CA, and you would remand for consideration of this matter, which would include, I would think, determining whether, if not by evidence, the defendant had otherwise supported its summary judgment motion. I could go along with that disposition but would write separately setting

out some of the above thoughts if you do not care to expand your discussion somewhat.

By the way, I see no reason to disavow, rather than to interpret, any of the language in Adickes, especially since you say the pertinent passage is literally accurate and since one must strain to read that language as requiring a defendant always to come up with evidence to negative the plaintiff's case.

I hope to be able to join you.

Sincerely yours,



Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 19, 1986

198  
85-190 - Celotex Corporation v. Catrett

Dear Bill,

Please join me. I shall probably write  
a few concurring words.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

WA 137



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 1, 1986

Re: No. 85-198-Celotex Corp. v. Catrett

Dear Bill:

Please join me.

Sincerely,

*JM.*

T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 24, 1985

Re: No. 85-198, Celotex Corporation v. Catrett

Dear Bill:

Please join me in your dissent from denial of certiorari in this case.

Sincerely,



Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1986

Re: No. 85-198, Celotex Corp. v. Catrett

Dear Bill:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 6, 1986

85-198 Celotex Corporation v. Catrett

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

1986 MAY 10 10 30

OFFICE WTS

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: Justice Rehnquist

Circulated: OCT 22 1985

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

CELOTEX CORPORATION *v.* MYRTLE NELL  
 CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
 STATES COURT OF APPEALS FOR THE DISTRICT  
 OF COLUMBIA CIRCUIT

No. 85-198. Decided October —, 1985

JUSTICE REHNQUIST, dissenting from the denial of certiorari.

This case involves the procedure for summary judgment established by Fed. Rule Civ. Proc. 56. Respondent Catrett sued petitioner Celotex Corporation in the United States District Court for the District of Columbia to recover for the allegedly asbestos-related death of her husband. After two years of discovery, Celotex moved for summary judgment on the ground that respondent had failed to develop any admissible evidence establishing that her husband had been exposed to asbestos products manufactured by Celotex. Celotex submitted no affidavits or other materials supporting this contention, but simply relied upon its view that because plaintiff Catrett would have the burden of proof on this issue at trial, she was obligated to point to some evidence that would support a finding in her favor on this issue. The only evidence that Catrett had in fact produced was evidence that the majority of the Court of Appeals assumed would have been inadmissible at trial. Catrett contended that she had no obligation at the summary judgment stage to come forth with any evidence at all on this issue unless petitioner Celotex first produced evidence *negating* her allegation that her husband had been exposed to petitioner's asbestos products.

The District Court granted the motion for summary judgment, but a divided Court of Appeals reversed. 756 F. 2d

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: Justice Rehnquist

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Recirculated: **OCT 31 1985**

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

CELOTEX CORPORATION *v.* MYRTLE NELL  
 CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
 STATES COURT OF APPEALS FOR THE DISTRICT  
 OF COLUMBIA CIRCUIT

No. 85-198. Decided November —, 1985

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE BLACKMUN join, dissenting from the denial of certiorari.

This case involves the procedure for summary judgment established by Fed. Rule Civ. Proc. 56. Respondent Catrett sued petitioner Celotex Corporation in the United States District Court for the District of Columbia to recover for the allegedly asbestos-related death of her husband. After two years of discovery, Celotex moved for summary judgment on the ground that respondent had failed to develop any admissible evidence establishing that her husband had been exposed to asbestos products manufactured by Celotex. Celotex submitted no affidavits or other materials supporting this contention, but simply relied upon its view that because plaintiff Catrett would have the burden of proof on this issue at trial, she was obligated to point to some evidence that would support a finding in her favor on this issue. The only evidence that Catrett had in fact produced was evidence that the majority of the Court of Appeals assumed would have been inadmissible at trial. Catrett contended that she had no obligation at the summary judgment stage to come forth with any evidence at all on this issue unless petitioner Celotex first produced evidence *negating* her allegation that her husband had been exposed to petitioner's asbestos products.

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: **Justice Rehnquist**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-198

**CELOTEX CORPORATION, PETITIONER v. MYRTLE  
 NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

The United States District Court for the District of Columbia granted the motion of petitioner Celotex Corporation for summary judgment against respondent Catrett because the latter was unable to produce evidence in support of her allegation in her wrongful death complaint that the decedent had been exposed to petitioner's asbestos products. A divided panel of the Court of Appeals for the District of Columbia Circuit reversed, however, holding that petitioner's failure to support its motion with evidence tending to *negate* such exposure precluded the entry of summary judgment in its favor. 756 F. 2d 181 (1985). This view conflicted with that of the Third Circuit in *In re Japanese Electronic Products*, 723 F. 2d 238 (1985), rev'd on other grounds sub nom. *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, — U. S. — (1986).<sup>1</sup> We granted certiorari to resolve the conflict, — U. S. — (1985), and now reverse the decision of the District of Columbia Circuit.

Respondent commenced this lawsuit in September 1980, alleging that the death in 1979 of her husband, Louis H.

<sup>1</sup> Since our grant of certiorari in this case, the Fifth Circuit has rendered a decision squarely rejecting the position adopted here by the District of Columbia Circuit. See *Fontenot v. Upjohn Co.*, 780 F. 2d 1190 (CA5 1986).

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

pp. 2 & 3 and

STYLISTIC CHANGES THROUGHOUT

From: Justice Rehnquist

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-198

**CELOTEX CORPORATION, PETITIONER v. MYR-  
TLE NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
OF LOUIS H. CATRETT, DECEASED**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.  
The United States District Court for the District of Colum-  
bia granted the motion of petitioner Celotex Corporation for  
summary judgment against respondent Catrett because the  
latter was unable to produce evidence in support of her alle-  
gation in her wrongful death complaint that the decedent had  
been exposed to petitioner's asbestos products. A divided  
panel of the Court of Appeals for the District of Columbia  
Circuit reversed, however, holding that petitioner's failure to  
support its motion with evidence tending to *negate* such ex-  
posure precluded the entry of summary judgment in its  
favor. 244 U. S. App. D. C. 160, 756 F. 2d 181 (1985). This  
view conflicted with that of the Third Circuit in *In re Japa-  
nese Electronic Products*, 723 F. 2d 238 (1983), rev'd on other  
grounds *sub nom. Matsushita Electric Industrial Co. v. Ze-  
nith Radio Corp.*, 475 U. S. — (1986).<sup>1</sup> We granted cer-  
tiorari to resolve the conflict, 474 U. S. — (1985), and now  
reverse the decision of the District of Columbia Circuit.  
Respondent commenced this lawsuit in September 1980, al-  
leging that the death in 1979 of her husband, Louis H.

<sup>1</sup>Since our grant of certiorari in this case, the Fifth Circuit has rendered  
a decision squarely rejecting the position adopted here by the District of  
Columbia Circuit. See *Fontenot v. Upjohn Co.*, 780 F. 2d 1190 (1986).

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To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: **Justice Rehnquist**

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Recirculated: MAY 17 1986

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-198

CELOTEX CORPORATION, PETITIONER v. MYRTLE NELL CATRETT, ADMINISTRATRIX OF THE ESTATE OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

The United States District Court for the District of Columbia granted the motion of petitioner Celotex Corporation for summary judgment against respondent Catrett because the latter was unable to produce evidence in support of her allegation in her wrongful death complaint that the decedent had been exposed to petitioner's asbestos products. A divided panel of the Court of Appeals for the District of Columbia Circuit reversed, however, holding that petitioner's failure to support its motion with evidence tending to *negate* such exposure precluded the entry of summary judgment in its favor. 244 U. S. App. D. C. 160, 756 F. 2d 181 (1985). This view conflicted with that of the Third Circuit in *In re Japanese Electronic Products*, 723 F. 2d 238 (1983), rev'd on other grounds *sub nom. Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U. S. — (1986).<sup>1</sup> We granted certiorari to resolve the conflict, 474 U. S. — (1985), and now reverse the decision of the District of Columbia Circuit.

Respondent commenced this lawsuit in September 1980, alleging that the death in 1979 of her husband, Louis H.

<sup>1</sup> Since our grant of certiorari in this case, the Fifth Circuit has rendered a decision squarely rejecting the position adopted here by the District of Columbia Circuit. See *Fontenot v. Upjohn Co.*, 780 F. 2d 1190 (1986).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 25, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 85-198, Celotex Corp. v. Catrett  
No. 85-1353, Box v. A & P Tea Co.:

Petr, a black woman, filed a Title VII sex-discrimination claim against resp based on resp's failure to promote her to a management position, such as bookkeeper or assistant manager. Resp moved for summary judgment on the grounds that (1) petr did not raise her sex-discrimination claim in her complaint to the EEOC, and (2) all persons who had recently been promoted to bookkeeper were female. In a reply memorandum, resp also argued that petr could not produce any factual support for her sex-discrimination claim; according to resp, "when the undisputed facts which emerge from a plaintiff's deposition show that she cannot show a prima facie case ..., summary judgment is appropriate."

The DC granted resp's motion for summary judgment, citing both of the original grounds raised by resp. On appeal, the CA 7 affirmed the entry of summary judgment, but based its decision on the alternative ground raised by resp in its reply memorandum to the DC. The CA 7 characterized resp's two primary arguments on appeal, namely, that (1) petr never applied for an assistant manager's position, and (2) petr never identified which position she thought she was discriminatorily denied, as "merely more particularized" versions of the more general argument raised in the reply memorandum. The CA 7 thus ruled that petr had received adequate notice, in the DC, that she was required to come forward with any evidence she might have in support of her sex-discrimination claim.

The CA 7 found that petr's deposition testimony showed that she never formally applied for an assistant manager's position. The CA 7 also found that petr had failed to offer sufficient evidence showing that she would have applied for such a position, had she known of an opening. According to the CA 7, the record showed that petr had nothing more than

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-198

CELOTEX CORPORATION, PETITIONER *v.* MYRTLE  
 NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1986]

JUSTICE STEVENS, dissenting.

According to settled principles of *stare decisis*, the judicial interpretation of a statute is entitled to a powerful presumption of continued validity.<sup>1</sup> The same presumption should govern the judicial interpretation of a Federal Rule of Civil Procedure. With disturbing nonchalance, the Court today jettisons the interpretation of Rule 56 explicated in *Adickes v. S. H. Kress & Co.*, 398 U. S. 144 (1970). *Ante*, at 6-7. If the reconsideration and repudiation of *Adickes* were necessary for the disposition of this case, I would confront the question whether that 16-year old opinion should be given the deference usually accorded the prior interpretation of a Federal Rule. Because it is manifestly clear, however, that a far

<sup>1</sup>See, e. g., *NLRB v. International Longshoreman's Assn.*, — U. S. —, — (1985) (slip op. 22) (adhering to "the normal presumption of *stare decisis* in cases of statutory interpretation"); *Illinois Brick Co. v. Illinois*, 431 U. S. 720, 736 (1977) ("We must bear in mind that considerations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation"); *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting) ("*stare decisis* is usually the wise policy because, in most matters, it is more important that the applicable rule of law be settled than that it be settled right. . . . This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation").

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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Recirculated: MAY 13 1986

1, 2, 3

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-198

CELOTEX CORPORATION, PETITIONER *v.* MYRTLE  
NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1986]

JUSTICE STEVENS, dissenting.

57

As the Court points out, *ante*, at 2, the petitioner's motion for summary judgment was based on the proposition that respondent could not prevail unless she proved that her deceased husband had been exposed to petitioner's products "within the jurisdictional limits" of the District of Columbia.<sup>1</sup> Respondent made an adequate showing—albeit possibly not

<sup>1</sup> See Motion of Defendant Celotex Corporation for Summary Judgment, Joint App. 170 ("Defendant Celotex Corporation, pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure moves this Court for an Order granting Summary Judgment on the ground that plaintiff has failed to produce evidence that any product designed, manufactured or distributed by Celotex Corporation was the proximate cause of the injuries alleged *within the jurisdictional limits of this Court*") (emphasis added); Memorandum of Points and Authorities in Support of Motion of Defendant Celotex Corporation for Summary Judgment, *id.*, at 175 (Plaintiff "must demonstrate some link between a Celotex Corporation product claimed to be the cause of the decedent's illness and the decedent himself. The record is totally devoid of any such evidence *within the jurisdictional confines of this Court*") (emphasis added); Argument in support of Motion of Defendant Celotex Corporation for Summary Judgment, *id.*, at 211 ("Our position is . . . there has been no product identification of any Celotex products . . . that have been used *in the District of Columbia* to which the decedent was exposed") (emphasis added).

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: MAY 22 1986

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-198

CELOTEX CORPORATION, PETITIONER *v.* MYRTLE  
 NELL CATRETT, ADMINISTRATRIX OF THE ESTATE  
 OF LOUIS H. CATRETT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1986]

JUSTICE STEVENS, dissenting.

As the Court points out, *ante*, at 2, the petitioner's motion for summary judgment was based on the proposition that respondent could not prevail unless she proved that her deceased husband had been exposed to petitioner's products "within the jurisdictional limits" of the District of Columbia.<sup>1</sup> Respondent made an adequate showing—albeit possibly not

<sup>1</sup> See Motion of Defendant Celotex Corporation for Summary Judgment, App. 170 ("Defendant Celotex Corporation, pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure moves this Court for an Order granting Summary Judgment on the ground that plaintiff has failed to produce evidence that any product designed, manufactured or distributed by Celotex Corporation was the proximate cause of the injuries alleged *within the jurisdictional limits of this Court*") (emphasis added); Memorandum of Points and Authorities in Support of Motion of Defendant Celotex Corporation for Summary Judgment, *id.*, at 175 (Plaintiff "must demonstrate some link between a Celotex Corporation product claimed to be the cause of the decedent's illness and the decedent himself. The record is totally devoid of any such evidence *within the jurisdictional confines of this Court*") (emphasis added); Transcript of Argument in Support of Motion of Defendant Celotex Corporation for Summary Judgment, *id.*, at 211 ("Our position is . . . there has been no product identification of any Celotex products . . . that have been used *in the District of Columbia* to which the decedent was exposed") (emphasis added).



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 1, 1986

No. 85-198 Celotex Corporation v. Catrett

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

100-100000-0500